

RESOLUTION NO. 14-007

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS
APPROVING SITE DEVELOPMENT PERMIT AMENDMENT NO. SA13-0004 TO FOR
SITE IMPROVEMENT AND EXTERIOR FACADE MODIFICATIONS FOR A
PREVIOUSLY APPROVED 32 SINGLE-FAMILY HOME SUBDIVISION**

WHEREAS, on May 7, 2013, the Milpitas City Council adopted Resolution No. 8253 granting approval of Vesting Major Tentative Map MT12-0002, Site Development Permit SD12-0003, Conditional Use Permit UP12-0016, and Environmental Impact Assessment EA12-0005 for the construction of 28 single-family homes, four live-work units and associated site improvements. The project site is located within the Town Center Zoning District at the Northwest corner of South Milpitas Blvd and Los Coches Street (APN 8639001).

WHEREAS, the original applicant and owner of the project, DRG Builders sold the project to Tri Pointe Homes, Inc., a Delaware corporation.

WHEREAS, on December 4, 2013, an application was submitted by Tri Pointe Homes, Inc. to amend existing Site Development Permit No. SD12-0003 for the Project to revise the site improvement and exterior facade for the previously approved 32 single-family home subdivision.

WHEREAS, the Planning Division completed an environmental assessment for proposed amendment to Site Development Permit No. SD12-0003 in accordance with the California Environmental Quality Act (CEQA), and recommends that the Planning Commission find this proposed amendment is consistent with Environmental Impact Assessment EA12-0005 and the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program previously adopted by the City Council on May 7, 2013, and all previous mitigation measures and monitoring and reporting program are still applicable and no new conditions exist that invalidate the previous environmental determination.

WHEREAS, on February 26, 2014 the Planning Commission held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties.

NOW THEREFORE, the Planning Commission of the City of Milpitas hereby finds, determines and resolves as follows:

Section 1: The Planning Commission has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the Planning Commission. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

Section 2: The Planning Commission finds (i) the proposed amendment to Site Development Permit No. SD12-0003 is consistent with Environmental Impact Assessment

EA12-0005 and the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program previously adopted by the City Council on May 7, 2013; (ii) all previous mitigation measures and monitoring and reporting program are still applicable and no new conditions exist that invalidate the previous environmental determination; and (iii) the changes to site design, architecture, grading and circulation for the project will not create a significant environment impact that require further analysis under CEQA.

Section 3: A copy of Resolution No. 8253 adopted by the City Council on May 7, 2013 is attached to this Resolution as Exhibit 2 and fully incorporated herein. Site Development Permit SD12-0003 approved by the City of Milpitas on May 7, 2013 as part of Resolution No. 8253 shall remain in full force and effect unless explicitly amended by this Resolution and as further set forth in Exhibit 1. In the event there is any conflict or discrepancies between Site Development Permit No. SD12-0003 and Site Development Permit Amendment No. SA13-0004, Site Development Permit No. SA 13-0004 shall control.

Section 4: Site Development Permit Amendment (Section XI-10-57-03(F)(1)) - The Planning Commission makes the following findings based on the evidence in the public record in support of Site Development Permit Amendment SA13-0004:

Site Development Permit Amendment (Section XI-10-57-03-1(F))

- 1. The layout of the site and design of the proposed buildings, structures and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development.*

As further explained in the staff report, the project is consistent with this finding because the proposed placement of live-work units facing South Milpitas Blvd. provides a buffer to the single-family residential uses. The residential is positioned away from the arterial roadway. The commercial storefronts of the live-work units are compatible with neighboring businesses and the desired character along South Milpitas Blvd. Further, the layout of the project has not changed since approval of Site Development Permit SD12-0003.

- 2. The project is consistent with the Milpitas Zoning Ordinance.*

The project is consistent with this finding because the site is zoned Town Center and the approved use is permitted in the Town Center designation. As further explained in the staff report, the development standards have been approved under Site Development Permit SD12-0003 and have been found to conform to the zoning district. The project as modified has not altered or changed in a manner that renders it inconsistent with the Zoning Ordinance. Further, the Live-Work units also conform to the Live-Work Ordinance.

- 3. The project is consistent with the Milpitas General Plan.*

The project is consistent with this finding as discussed previously in the staff report, and because the approved use is allowed in the Town Center land use designation. The project furthers the goals and policies of the land use element by creating a live-work environment along South

Milpitas Blvd and providing additional housing to create a compact mixed-use district in the heart of Milpitas.

Section 6: The Planning Commission of the City of Milpitas hereby adopts **Resolution No. 14-007 amending Site Development Permit No. SD12-0003 and approving Site Development Permit Amendment No. SA13-0004 based on the above Findings and subject to the Conditions of Approval attached hereto as Exhibit 1 and incorporated herein.**

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on February 26, 2014:

Chair

TO WIT:

I HEREBY CERTIFY that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on February 26, 2014 and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Lawrence Ciardella				
John Luk				
Rajeev Madnawat				
Sudhir Mandal				
Gurdev Sandhu				
Garry Barbadillo				
Demetress Morris				
Hon Lien				

EXHIBIT 1

**REVISED CONDITIONS OF APPROVAL FOR
SITE DEVELOPMENT PERMIT AMENDMENT
SA13-0004**

1. All approved entitlements and previous conditions of approval not modified by this amendment shall remain in full force and effect as stated in Resolution No. 8253 granting approval of Vesting Major Tentative Map MT12-0002, Conditional Use Permit UP12-0016, and Environmental Impact Assessment EA12-0005. Conditions of approval Nos. 6, 10, 55-83 for the Site Development Permit SD12-0003 are hereby deleted and replaced in its entirety with the Conditions of Approval set forth in this Exhibit.

The following General Conditions are amended and included for the project:

2. The owner or designee shall develop the approved project in conformance with the plans approved by the Planning Commission on February 26, 2014, in accordance with these Conditions of Approval and subject to review and approval of the Planning Division.

Any deviation from the approved site plan, elevations, materials, colors, landscape plan, or other approved submittal shall require that, prior to the issuance of building permits, the owner or designee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the Planning Commission, in accordance with the Zoning Ordinance. **(P)**

Site Development Permit Amendment No. SA13-0004 shall become null and void if the project is not commenced within two (2) years from the date of approval unless in conjunction with a tentative map, then the project life coincides with the life of the map. Pursuant to Section 64.06(B) of the Zoning Ordinance of the City of Milpitas, commencement shall be:

- a. Completes a foundation associated with the project; or
 - b. Dedicates any land or easement as required from the zoning action; or
 - c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.
3. Pursuant to Section 64.06(1) of the Zoning Code, the owner or designee shall have the right to request an extension of Site Development Permit Amendment No. SA13-0004 if said request is made, filed and approved by the Planning Commission prior to expiration dates set forth herein. **(P)**
 4. Prior to the issuance of any building permit, the owner or designee shall pay in full the project account balance and establish a remaining balance of 25% of the initial deposit.

5. Prior to the issuance of any building permit, the owner or designee shall include within the four first pages of the working drawings for a plan check, a list of all conditions of approval imposed by the final approval of the project. **(P)**
6. All previous environmental mitigation approved as part of EA12-0005 shall remain in effect and must be implemented before during or after project construction per the Mitigation Monitoring and Reporting Program.
7. Indemnification. To the fullest extent permitted by law, owner or designee shall indemnify, defend with counsel of the City's choosing, and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the project, including but not limited to, the approval of the discretionary permits, maps under the Subdivision Map Act, and/or the City's related determinations or actions under the California Environmental Quality Act. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The owner or designee shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The owner or designee shall pay to the City upon demand or, as applicable, to counsel of City's choosing, any amount owed pursuant to the indemnification requirements prescribed in this condition. **(CA)**
8. The construction and use shall comply with all local, state, and federal laws, rules, regulations, guidelines, requirements, and policies. **(CA/P)**
9. The live/work units shall be metered separately for water service. Each unit may have its own meter or all units may be served by a master meter managed by the HOA. If individual meters are used, the demand must meet AWWA detection tolerances or a compound meter may be required for each unit. **(E)**
10. The driveway off of South Milpitas Boulevard shall be used for entrance only and be signed as striped as such subject to review and approval of the Planning Division.
11. The owner shall dedicate a public trail easement for the sidewalk along the northern property line leading to the adjacent development (Orchid) and trail along Wrigley Creek. The owner shall allow reciprocal access to this trail from the adjacent site.

The following conditions replace Conditions Numbers 55-83 in Site Development Permit No. SD12-0003:

12. All stucco finishes shall be a smooth sand finish (20/30 grade or smoother).
13. All exterior lighting fixtures shall be used, black and of architectural style to complement the iron railing. Final material, color and design of lighting will be at the discretion of the Planning Division during building permits. (P)
14. All roof gutter and down spouts to match or compliment house trim.
15. All materials, colors, and finishes shall be subject to Planning Division approval during building permits. (P)
16. Where allowed by Building Code, all roofs overhangs shall be at least 12 inches.(P)
17. Decorative, colored, paving or pavers shall be incorporated at the entryways, and at the corner plaza area. All final materials, colors, and finishes shall be subject to Planning Division approval during building permit and improvement plan review. (P)
18. Live-Work Units:
 - a. Commercial windows shall not use dark tinting. Light tinting is ok.
 - b. All the canopies shall be of rectangular shape and utilize a durable material.
 - c. Awnings are not allowed to display signage or logos, nor be internally illuminated.
 - d. A masonry precast cap for privacy walls between and around the commercial unit shall be incorporated on all live-work units.
 - e. Store front wall lighting shall be subject to Planning Staff's approval.
 - f. The roof material shall be standing metal and a color that compliments the building color. All materials, colors, and finishes shall be subject to Planning Division approval during building permits process. (P)
18. Live-Work Building Signage:
 - a. Signage shall be architectural dye cut metal letters.
 - b. Signage shall be front illuminated with architectural grade and quality gooseneck lighting or similar style.
 - c. Signage shall be located over the storefront door, and awning as shown on the live-work elevation exhibit. (P)
19. Lot 8 and 9 enhanced side elevations shall include artwork subject to review and approval of the Planning Staff during the building permit review. The maintenance of the public art is the responsibility of the property owner. (P)
20. Lot 11 trail side privacy wall shall be decorative finish with precast concrete cap. All wall materials, colors, and finishes shall be subject to Planning Division approval during building permits. (P)
21. Final sidewalk paving and/or pavers and landscaping along Los Coches St. and S. Milpitas Blvd. shall be designed to enhance the urban and architectural changes of the live-work units subject to Planning Staff approval. (P)

22. Pedestrian scaled lighting shall be incorporated along South Milpitas Blvd. and Los Coches Street. (P)
23. Sidewalks shall be continuous throughout the entire project as to meet the City's complete streets policies, contained within the Milpitas General Plan. All internal crosswalks shall utilize decorative pavers. (P)
24. The trail entry shall incorporate actual stone work with precast concrete cap. No artificial stone. Wood used shall be of heavy dimensional timber. (P)
25. Signage for the trail and trail lighting subject to Planning Division approval during building permits process. (P)
26. A signed agreement between the property owner or designee and the neighboring property to the north of the project site for the planting and maintenance of the landscaping along the new paved pedestrian trail shall be commenced prior to certificate of occupancy. (P)
27. All street trees along S Milpitas Blvd. and Los Coches Street subject to review and approval of staff during improvement plan review. (P)

(P) = Planning

(B) = Building

(E) = Engineering

(F) = Fire Prevention

(CA) = City Attorney